

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 R.J.; N.J.; and N.J.; MINORS, BY  
5 AND THROUGH THEIR GUARDIAN AD  
6 LITEM CURTIS R. NAMBA,

7                                    Plaintiffs,

8                                    v.

9 COUNTY OF ALAMEDA; ALAMEDA COUNTY  
10 SOCIAL SERVICES; DOE ALAMEDA  
11 COUNTY SOCIAL SERVICES' SOCIAL  
12 WORKER; DOE ALAMEDA COUNTY SOCIAL  
13 SERVICES' SUPERVISOR; WEST COAST  
14 CHILDREN'S CLINIC; DOES 1-60,  
15 INCLUSIVE,

16                                    Defendants.

No. C 11-4123 CW

ORDER GRANTING  
MOTION TO DISMISS  
WITH LEAVE TO  
AMEND

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24                                    INTRODUCTION

25                                    Plaintiffs bring a second amended complaint (2AC) against  
26 Defendants. In relevant part, they allege that Defendant West  
27 Coast Children's Clinic (West Coast) negligently breached its  
28 statutory duty to warn Plaintiffs, as reasonably foreseeable  
victims, of the serious threat of bodily harm made against them by  
West Coast's patient. As a result of this breach, Plaintiffs  
claim they have suffered physical and emotional harm. West Coast  
moves to dismiss the complaint; Plaintiffs oppose.

29                                    BACKGROUND

30                                    Plaintiffs in this case are three minor children, R.J., N.J.,  
31 and N.J., who are represented in these proceedings by a Guardian  
32 ad Litem, Curtis R. Namba. At all times relevant to this case,  
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1 they were foster children in Alameda County. Prior to September  
2 2007, Plaintiffs lived with their foster parents, Lois Jones and  
3 TaTanisha McNeil. At that time their half-sister, Laronda W., was  
4 placed in the foster home with them.

5 According to the complaint, on or about November 30, 2009,  
6 Ronald revealed that Laronda had been sexually abusing him since  
7 she came into the home. The reported abuse included oral  
8 copulation, intercourse and fondling. A few days later it was  
9 discovered that Laronda had molested two year old Noah, and  
10 Plaintiffs believe that she also molested his twin sister.

11 Plaintiffs bring a 2AC against Defendants Alameda County,  
12 County of Alameda Department of Social Services (DSS), and West  
13 Coast. The lawsuit names four causes of action: 1) violations of  
14 statutory and regulatory duties as to Alameda County and DSS,  
15 2) civil rights claim under 42 U.S.C 1983 as to Alameda County and  
16 DSS, 3) fraud, misrepresentation, fraudulent concealment and  
17 omission as to Alameda County and DSS, and 4) negligent breach of  
18 psychotherapist's statutory duty to warn as to West Coast. West  
19 Coast moves to dismiss Plaintiffs' fourth cause of action on the  
20 grounds that it fails to state a claim.

21 Plaintiffs allege that West Coast had knowledge of Laronda's  
22 history of violence and sexual abuse of other children who were in  
23 homes where she was placed. They allege that all Defendants,  
24 including West Coast, were aware that she was a sex offender as  
25 early as 2001 when they received reports that she had engaged in  
26 sexual activity with a five year old. Moreover they claim that  
27 Laronda was removed from another foster home in May 2001 for  
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1 beating up and molesting her younger sister. Plaintiffs also  
2 claim that all Defendants were aware that Laronda was removed from  
3 yet another home for sexually abusing an eleven year old boy.  
4 They claim that West Coast was aware that instances of sexually  
5 abusive behaviors were continuing up until the time that Laronda  
6 was placed into the foster home with Plaintiffs. Plaintiffs  
7 allege that West Coast employed therapists who had a  
8 psychotherapist-patient relationship with Laronda and that Laronda  
9 communicated to her therapists threats of physical violence  
10 against minor children residing with her in foster homes.

11 LEGAL STANDARD

12 A complaint must contain a "short and plain statement of the  
13 claim showing that the pleader is entitled to relief." Fed. R.  
14 Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to  
15 state a claim, dismissal is appropriate only when the complaint  
16 does not give the defendant fair notice of a legally cognizable  
17 claim and the grounds on which it rests. Bell Atl. Corp. v.  
18 Twombly, 550 U.S. 544, 555 (2007). In considering whether the  
19 complaint is sufficient to state a claim, the court will take all  
20 material allegations as true and construe them in the light most  
21 favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d  
22 896, 898 (9th Cir. 1986). However, this principle is inapplicable  
23 to legal conclusions; "threadbare recitals of the elements of a  
24 cause of action, supported by mere conclusory statements," are not  
25 taken as true. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009)  
26 (citing Twombly, 550 U.S. at 555).

DISCUSSION

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2 Plaintiffs contend that, under California law, West Coast had  
3 a duty to warn reasonably foreseeable victims of the immediate  
4 danger stemming from Laronda's threats and violent, sexually  
5 abusive tendencies. They claim that West Coast breached this duty  
6 by failing to warn either the County Defendants or Plaintiffs'  
7 foster parents of the danger posed by Laronda to her siblings.

8 In its motion, West Coast argues that it had no duty to warn  
9 in this case because its therapists had no knowledge of Laronda's  
10 history or propensity to harm other children in her home as  
11 alleged in the complaint. It further maintains that Plaintiffs  
12 cannot "show that West Coast therapists knew of Laronda's alleged  
13 sexual molestation of foster children before she was seen at West  
14 Coast or that Laronda made a serious threat of violence against  
15 plaintiffs." As Plaintiffs correctly point out, West Coast's  
16 argument is inapplicable on a motion to dismiss. The question on  
17 a motion to dismiss is not whether the facts alleged are true and  
18 verifiable but, rather, whether Plaintiffs have alleged facts  
19 which, if true, support the claim.

20 California Civil Code § 43.92(a) states that there is no  
21 cause of action against a psychotherapist for failing to warn of  
22 and protect others from a patient's threatened violent behavior or  
23 failing to predict and warn of a patient's violent behavior  
24 "except where the patient has communicated to the psychotherapist  
25 a serious threat of physical violence against a reasonably  
26 identifiable victim or victims."

27 Plaintiffs list several specific instances of past abuse by  
28 Laronda which they claim showed her propensity for sexual violence

1 against other children. Plaintiffs also allege that she  
2 communicated threats of violence against children in her foster  
3 care placement to her therapist employed by West Coast. However,  
4 in claiming that Laronda "communicated to the psychotherapists a  
5 serious threat of physical violence against reasonable  
6 identifiable victim or victims, specifically minor children  
7 residing in foster homes where she was placed," Plaintiffs merely  
8 recite the language of the statute. Although detailed factual  
9 allegations are not required, the critical element of this  
10 complaint is conclusory, and alleges no specific facts as to what  
11 Laronda actually said to the psychotherapist that constituted a  
12 threat to specific persons.

13 Although this is a second amended complaint, it is the first  
14 motion related to this complaint on which the Court has ruled.  
15 Moreover, West Coast failed to cite the correct standard in its  
16 moving papers. Accordingly, Plaintiffs are granted leave to amend  
17 their complaint within fourteen days so long as they can  
18 truthfully cure the deficiencies noted above.

19 If Plaintiffs file an amended complaint, West Coast shall  
20 answer or file a motion to dismiss fourteen days thereafter. If  
21 West Coast moves to dismiss, Plaintiffs' opposition shall be due  
22 seven days after the motion is filed. Any reply shall be due  
23 seven days after that. This motion will be decided on the papers.  
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CONCLUSION

For the foregoing reasons the motion to dismiss is granted  
with leave to amend.

IT IS SO ORDERED.

Dated: 11/23/2011

  
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CLAUDIA WILKEN  
United States District Judge